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CHARLES ELMORE GOSPEL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No.  47

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, SEATRAN LINES, INC., ET AL., *Appellants*,

v.

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.

No.  48

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.,
Appellants,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, SEATRAN LINES, INC., ET AL.

**BRIEF OF APPELLANTS IN NO. 846 (APPELLEES IN
NO. 845) ON THE QUESTION WHETHER THE
CAUSE IS MOOT, AND SUPPORTING AFFIDAVIT.**

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**BRIEF OF APPELLANTS IN NO. 846 (APPELLEES IN
NO. 845) ON THE QUESTION WHETHER THE
CAUSE IS MOOT.**

This brief is filed pursuant to the rule to show cause
herein issued April 24, 1944.

OPINIONS BELOW.

The opinions of the specially-constituted District Court in
*The Pennsylvania Railroad Company et al., v. United
States of America et al.*, are not officially reported but ap-
pear in the Jurisdictional Statement in No. 845 at pages
17 and 81.

The report of the Interstate Commerce Commission of October 13, 1941, in Nos. 25728 and 27878, *Hoboken Manufacturers R. Co. v. Abilene & S.R. Co.*, is reported in 248 I.C.C. 109.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28, sections 47(a) and 345, for the taking of a direct appeal to this Court from the final decree of a United States District Court made pursuant to the provisions of U. S. Code, Title 28, sections 41 (28), 43-48, enjoining in whole or in part an order of the Interstate Commerce Commission. The final decree of the District Court was entered December 8, 1943, and appears in the Jurisdictional Statement No. 485, page 94.

STATEMENT.

A direct appeal has been taken from the final decree which set aside an order of the Interstate Commerce Commission in so far as said order directs petitioners to permit the interchange of their freight cars with or for the use of Seatrain Lines, Inc., for transportation beyond the United States and its territorial waters.

Fifteen railroad companies, appellees in No. 845 (appellants in No. 846), hereinafter referred to as petitioners, filed a petition under the Urgent Deficiencies Act (28 U.S.C. 41 (28), 43-48) in the District Court of the United States for the District of New Jersey, seeking to annul, as beyond its statutory authority and as confiscatory, the order of the Interstate Commerce Commission dated October 13, 1941, entered in its Docket Nos. 25728 and 25878 *Hoboken Mfrs. R. Co. v. Abilene & S.R. Co.*, 248 I.C.C. 109.

If this Court should adjudge that the said order, apparently enforceable on its face, has ceased to be effective and can no longer demand obedience, then the purpose of the suit has been accomplished. However, there are certain facts indicating that such is not the situation, which we feel should be called to the attention of the Court.

THE FACTS.

Hoboken Manufacturers Railroad Company, herein termed "the Hoboken", on December 30, 1932, commenced a proceeding before the Commission (Docket No. 25728) to compel the defendants therein, including petitioners herein, to cease and desist from the enforcement of Rule 4 of the Code of Car Service Rules (Finding 11, United States Jurisdictional Statement, p. 63) and to permit it to deliver their cars at Hoboken, N. J., to Seatrain Lines, Inc., hereinafter referred to as "Seatrain", a carrier by water which transports cargo in railroad cars between Hoboken, N. J., and Belle Chasse, La. Later the New Orleans and Lower Coast Railroad Company, herein termed the Lower Coast, filed with the Commission a similar complaint (Docket No. 25878) for the delivery of cars for Seatrain service at Belle Chasse, La. Contemporaneously with the filing of the Hoboken's complaint, Seatrain, which controls the Hoboken through stock ownership, commenced a proceeding before the Commission (Docket No. 25727) to compel the defendants, including The Pennsylvania Railroad Company and certain of the other petitioners, to join with it in establishing through routes and joint rates. Hearings were held jointly in Dockets 25728 and 25878, and the Commission rendered its report therein (206 I.C.C. 328, Amended Petition, p.49), holding that it had jurisdiction to compel the interchange of cars and to establish rules and regulations therefor only where through routes existed, and that the evidence in the proceeding did not show whether or to what extent such routes might exist. It thereupon dismissed No. 25728 and 25878. (Amended Petition, p.68).

Thereupon hearings were had in No. 25727, and the Commission, by its orders of January 28, 1938, and December 23, 1940, entered in connection with its reports of those respective dates (226 I.C.C. 7, 243 I.C.C. 199) required the defendants therein, including The Pennsylvania Railroad Company and certain of the petitioners herein,

to establish through routes and joint rates with Seatrain via Hoboken, N. J., and Belle Chasse, La. The pertinent portions of the order of January 28, 1938, are set forth as Exhibit 1 of the Eshelman affidavit.

"A 'through route' is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another."

(Brandeis, J., in *St. Louis S.W. Ry. Co. v. United States*, 245 U. S. 136 at p. 139)

Thereupon The Pennsylvania Railroad Company and certain other petitioners herein, in obedience to said order joined with Seatrain in the arrangement for the through routes so prescribed. Appropriate tariffs were filed with the Commission establishing the prescribed joint rates over the said through routes. The said arrangement has never been cancelled or terminated, and The Pennsylvania Company and certain other of the petitioners have ever since been participating in the through routes as directed by the Commission.

Thereafter, upon motion of complainants in Nos. 25728 and 25878, the Commission reopened said dockets, and upon further hearings made its finding that certain of the defendants therein "according as they participate in through routes with complainants and Seatrain, have failed to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operations, in violation of section 1(4) of the Interstate Commerce Act, by refusing to agree to the interchange of freight cars owned by them with complainants for delivery to Seatrain for use, in interstate commerce between points in the United States", and the further finding "that the current code of per diem rules governing the interchange of freight cars between the defendants above referred to and other rail carriers, including the current rate of \$1 per day payable by Seatrain for such period as the cars are

in its actual possession, would be reasonable for application to the interchange of cars between defendants and complainants for use by Seatrain." (248 I. C. C. 119; Amended Petition, p. 87).

The violation of section 1 (4) found by the Commission was the refusal to enter into an agreement with complainants for interchange of cars with Seatrain. The record below shows that in the absence of such an agreement the ~~complainants~~ ^{petitioners} were in fact interchanging petitioners' cars with Seatrain. The Commission thereupon issued its order of October 13, 1941 in Nos. 25278 and 25878 (United States Jurisdictional Statement, pp. 18-19), making a part of said order the reports of the Commission in 206 I. C. C. 328 and 237 I. C. C. 297 (Amended Petition: Ex. C, p. 49; Ex. G, p. 71). Thereby the Commission ordered that the defendants therein "according as they participate in through routes with complainants and Seatrain Lines, Inc., in interstate commerce via Belle Chasse, La., and Hoboken, N. J., be, and they are hereby, notified and required to cease and desist on or before February 2, 1942, and thereafter to abstain from observing and enforcing their present rules, regulations, and practices which prohibit the interchange of their freight cars with complainants herein for transportation by Seatrain Lines, Inc., in interstate commerce." As The Pennsylvania and certain of the other petitioners had entered into the required arrangement with said complainants and Seatrain, and were participating in the said through routes, the order of October 13, 1941, was applicable to them. The Commission, having thus found that the petitioners violated section 1(4) of the act, has accordingly ordered them to cease and desist on or before February 2, 1942, subsequently extended to May 15, 1944, and thereafter to abstain from observing and enforcing their existing rules, regulations, and practices under which petitioners have refused to consent to the delivery of their cars to Seatrain. The order prohibits the continuance or maintenance of these rules, regulations, and practices.

By the said order of October 13, 1941, the Commission therein further directed that the said defendants be notified and required to establish on or before February 2, 1942, subsequently extended to May 15, 1944, and thereafter to observe and enforce rules, regulations, and practices with respect to the interchange of their freight cars with complainants therein for transportation by Seatrain in interstate commerce. Further, the effectiveness of the order is not made to depend upon whether Seatrain has or has not ships available at the time. The railroads are required to establish the rules and observe the practice of delivering their cars to the Hoboken and the Lower Coast for Seatrain's use.

The situation is accordingly as follows: The petitioners have complied with the earlier orders by entering into the prescribed arrangement and establishing, maintaining, and participating in through routes and joint rates. The petitioners have not complied with the order complained of (October 13, 1941), and have not ceased, desisted, or abstained from observing and enforcing their rules, regulations, and practices which prohibit the interchange of their freight cars with Hoboken and Lower Coast for transportation by Seatrain. Further, the petitioners have not established, observed, or enforced rules, regulations, and practices with respect to the interchange of freight cars with the Hoboken and Lower Coast for transportation by Seatrain. They have not in any respect complied with the said order of October 13, 1941.

Pending an application for reconsideration and clarification of the said order, the Commission postponed the effective date from February 2, 1942 to April 1, 1942.

On March 26, 1942, the petitioners filed their petition in the United States District Court for the District of New Jersey seeking an interlocutory and permanent injunction annulling and setting aside the said order of October 13, 1941. As, by its terms, the said order was to "continue in effect until the further order of the Commission" (United

States Jurisdictional Statement, p. 19), Judge Fake requested the Commission to postpone the effective date until further order of the Commission. The Commission granted this request only to the extent of postponing the effective date until May 1, 1942.

During March, 1942, by the railway and steamship "Official Guide", Seatrain announced to the public that its coastwise service had been "temporarily suspended" (Eshelman affidavit).

In April, 1942, Seatrain and others filed Supplement No. 16 to the tariff naming the joint rates applicable over the said through routes. The portion of said supplement covering the discontinuance or suspension of steamship service is quoted in the Eshelman affidavit. Therein other steamship companies (Eastern Steamship Lines, Inc., and Ocean Steamship Company of Savannah) announced that their steamship service had been suspended, but the announcement of Seatrain and certain steamship companies was

"coastwise service temporarily suspended",

except

"that if and when ships and space are available, cargo will be accepted when covered by permit issued by the individual steamship lines.

"Application for permits must specify the kind and quantity of cargo, point of origin and destination, and ports of loading and discharge."

The supplemental tariff carrying this announcement to shippers has not been cancelled but now remains in full force and effect (Eshelman affidavit). Accordingly, Seatrain is holding out to the public that the coastwise service is only temporarily suspended, and further that even so, cargoes will be accepted from time to time by special permit as ships may be available.

Thereafter, and on July 2, 1942, the Commission rendered a report in its Docket No. W-543 in which it stated

that the temporary suspension of Seatrain's service "should not prevent it from obtaining a certificate authorizing continuance of the operations in which it was engaged on January 1, 1940". On the said date the Commission issued its certificate and order "That public convenience and necessity require the continuance of operations by Seatrain Lines, Inc., as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York, N. Y., New Orleans, La., and Texas City, Tex., by way of the Atlantic Ocean and the Gulf of Mexico," and "That this certificate and order shall take effect and be in force from and after August 10, 1942." The said certificate and order have not been annulled or modified and are now in full force and effect (Eshelman affidavit and Exhibit 4 thereto).

When the cause came on for hearing before the Court below on May 23, 1942, Judge Biggs requested counsel for the Commission to obtain a further postponement of the effective date of the said order until October 5, 1942, in order to avoid the necessity of passing upon petitioners' application for an interlocutory injunction, an otherwise immediate requirement. The Commission granted the said request by an order so postponing the effective date. Thereafter, pending final determination of this cause, by orders entered from time to time, the Commission has postponed the effective date of the order complained of until May 15, 1944.

THE CAUSE IS NOT MOOT.

The Commission, reciting in its findings that petitioners had violated section 1(4) of the Interstate Commerce Act by refusing to agree to the interchange of their freight cars, issued an order requiring them to cease and desist by February 2, 1943 (subsequently extended to May 15, 1944), from observing their present rules, regulations, and prac-

ties. That is a continuing order. The Commission also directed petitioners to establish, before the said date, rules, regulations, and practices for the interchange of cars with Seatrain, and thereafter to observe and enforce them. It is also a continuing order in that respect. Proceedings may be taken for its enforcement if it is disobeyed. The petitioners, except as protected by the courts, could be subjected to a fine of not to exceed \$5,000 per day under section 16(8) of the Act. The order prescribed the compensation for the use of petitioners' cars, which petitioners claim to be confiscatory. Under the statute, the petitioners are entitled to seek review of the order and to have it set aside if found to be invalid. The temporary suspension of Seatrain service does not relieve the petitioners from the requirement of the order to cease and desist from observing their present rules and practices, and does not relieve them of the duty to establish rules, regulations, and practices for the interchange of cars. Under the order, the rules and regulations are to be established by May 15, 1944, regardless of when the cars may be actually interchanged.

Such an order is a continuing order. *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260.

The duty and rights of the Pennsylvania and other petitioners depend upon the validity of the order. The petitioners contend that the order was beyond the power of the Commission and without statutory authority. The Commission and others assert its validity.² The controversy was determined by the Court below upon the record. It should be adjudicated here.

The cause is not moot.

Federal Trade Commission v. Goodyear Tire & Rubber Co., 304 U. S. 257;

United States v. Trans-Missouri Freight Assn., 166 U. S. 290;

Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433, 452;

Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 514-516;

National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261;

Leonard & Leonard v. Earle, 279 U. S. 392.

It is respectfully submitted that probable jurisdiction should be noted, and if the existence of a controversy is not now clear, it should be considered upon the record after argument.

Respectfully submitted,

JOHN VANCE HEWITT,
JOHN A. HARTPENCE,
JOSEPH F. ESHELMAN,
R. AUBREY BOGLEY,
*Counsel for Appellants in
No. 846 (Appellees in No. 845).*

IN THE

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OCTOBER TERM, 1943.

No. 845.THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, SEATRAIN LINES, INC., ET AL., *Appellants*,

v.

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No. 846.THE PENNSYLVANIA RAILROAD COMPANY, ET AL.,
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v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, SEATRAIN LINES, INC., ET AL.

**AFFIDAVIT IN SUPPORT OF BRIEF OF APPEL-
LANTS IN NO. 846 (APPELLEES IN NO. 845) ON
THE QUESTION WHETHER THE CAUSE IS MOOT.**

DISTRICT OF COLUMBIA, ss:

JOSEPH F. ESHELMAN, being duly sworn, deposes and
says: I reside at 326 Valley Road, Merion Station, Penn-
sylvania.I am counsel for The Pennsylvania Railroad Company
and the other railroad companies appellees in No. 845 and
appellants in No. 846, hereinafter referred to as the peti-
tioners, and I was counsel for certain of the said petitioners
before the Interstate Commerce Commission in the pro-
ceedings hereinafter referred to.

Prior to the issuance of the order of the Interstate Commerce Commission complained of in this cause, but as a purported basis therefor, the Commission on January 28, 1938, entered an order in I. C. C. Docket No. 25727 directing the defendants therein, including The Pennsylvania Railroad Company and the other petitioners herein, according as they participated in through routes with other water lines as therein described, to establish through routes and joint rates with Seatrain Lines, Inc. (226 I. C. C. 7). The parts of the said order directing the establishment of such through routes and joint rates are set forth in Exhibit 1 which is annexed hereto and made a part hereof. Subsequently, on December 23, 1940, the Commission in the said Docket No. 25727 entered an amendatory order changing the amount of the rates prescribed (243 I. C. C. 199). As shown by the record in this cause (petition pp. 74-75) the Commission stated (237 I. C. C. pp. 100-101): "This issue is limited to cars containing a portion, but not all, of the traffic transported by Seatrain, and to the interchange of the cars of some, but not all, of the defendants * * *". The Pennsylvania Railroad Company and certain of the other petitioners were participating in the through routes and joint rates with other water carriers, and pursuant to the said orders established through routes and joint rates with Seatrain Lines, Inc., via Hoboken, N. J., and Belle Chasse, La.

On October 13, 1941, the Interstate Commerce Commission entered its order dated that date in I. C. C. Docket Nos. 25728 and 25878, which order is set forth at pages 18 and 19 of the Statement as to Jurisdiction in No. 845 herein but omitted by the Clerk from the jurisdictional statement in No. 846 as a duplication. By its terms the said order directed certain railroad companies, defendants therein, including the petitioners, to cease and desist as provided therein on or before February 2, 1942, and to establish on or before the said date and thereafter to observe and enforce rules, regulations, and practices with

respect to the interchange of freight cars with complainants for transportation by Seatrain Lines, Inc." as prescribed therein. The complainants before the Interstate Commerce Commission and therein referred to were the Hoboken Manufacturers Railroad Company in Docket No. 25728 and New Orleans and Lower Coast Railroad Company in Docket No. 25878.

On December 26, 1941, the Interstate Commerce Commission entered an order postponing the effective date of its said order of October 13, 1941 until April 1, 1942. A true copy of the said order is annexed hereto as Exhibit 2 and made a part hereof.

The petitioners did not comply and have not complied with said order of October 13, 1941, but on March 26, 1942, and five days before the then effective date of the Commission's order, the petitioners filed in the United States District Court for the District of New Jersey their petition for an interlocutory and a permanent injunction enjoining, annulling, and setting aside the said order of the Commission.

The said petition as amended contained the following allegation:

"XV.

"In the No. 25727, referred to in Paragraph XII of this petition, the Commission made its report dated January 28, 1938, *Seatrain Lines, Inc. v. Akron C. & F. Ry. Co.*, 226 I.C.C. 7, upon which it entered its order of January 28, 1938, directing defendants therein, including the petitioner The Pennsylvania Railroad Company and certain of the other petitioners herein, to establish through routes and joint rates for combined rail and Seatrain service between railroad stations in the eastern and southwestern portions of the United States reached via Hoboken, N. J., and Belle Chasse, La. The said defendants therein, including The Pennsylvania Railroad Company and certain of the other petitioners herein, established the through routes so prescribed and now participate therein as directed by

the said order, and the said through routes are now in full force and effect. The joint rail-Seatrtrain rates so prescribed, as modified by the order of the Commission therein dated December 23, 1940, *Seatrtrain Lines, Inc. v. Akron C. & Y. Ry. Co.*, 243 I.C.C. 199, were established by The Pennsylvania Railroad Company and certain of the other petitioners, and are in full force and effect. The said rates were and are on the same general basis as had been prescribed for rail-water service in connection with other water carriers serving North Atlantic and Gulf ports and were and are on a lower basis than the all-rail rates."

The answer of the United States of America, paragraph 7 thereof, is as follows:

"Admits the allegations of paragraphs IX through XVIII."

No intervening defendant denied the allegations of said paragraph XV of the complaint.

The finding of the court below thereon is No. 24, pages 71-72 of Statement as to Jurisdiction, No. 845 (the Clerk having omitted in the printing as a duplication the said finding annexed to the Statement as to Jurisdiction in No. 846).

With respect to the temporary suspension of the service of Seatrain Lines, Inc., between Belle Chasse, La., and Hoboken, N. J., the March 1942 issue of the "Official Guide of the Railways and Steam Navigation Lines of the United States, Porto Rico, Canada, Mexico and Cuba", published by National Railway Publication Company, 424 West 23rd Street, New York, contains on page 1258 the excerpt which is annexed hereto as Exhibit 3 and made a part hereof. The said "Official Guide" is the trade publication in which railway and steamship companies publish, for the use of the public, information as to their services, schedules, and other pertinent matter.

By Supplement 15 to Curlett Tariff I.C.C. No. A-732, which supplement was issued April 10, 1942, effective April 16, 1942, and by Supplement 16 thereto issued April 29,

1942, effective June 1, 1942, which tariff and supplements were duly filed with the Interstate Commerce Commission, notice was given by Seatrain Lines, Inc., of the temporary suspension of the coastwise service of Seatrain Lines, Inc. Supplement 16 is still in effect and contains on page 2 thereof the following:

“[13] SUSPENSION OF SERVICE OF EASTERN
STEAMSHIP LINES, INC.

“The steamship service of the Eastern Steamship Lines, Inc., between all ports served by it, namely, Boston, Mass., Hopewell (City Point), Va., Newport News, Va., New York, N.Y., Norfolk, Va., Portland, Me., Portsmouth, Va., and Richmond, Va., is hereby suspended until further notice. (Departure from the terms of Rule 4(i), 8(f) and 9(a) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission No. 7447 (Corrected) of February 20, 1942).

“[14] SUSPENSION OF SERVICE OF OCEAN STEAM-
SHIP COMPANY OF SAVANNAH

“The steamship service of Ocean Steamship Company of Savannah from and to all ports served by it, namely, Boston, Mass. and New York, N. Y., is hereby suspended until further notice. (Departure from the terms of Rules 4(i), 8(f) and 9(a) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission No. 7966 of March 18, 1942).

“TEMPORARY SUSPENSION OF SERVICE OF ISSUING
AND PARTICIPATING STEAMSHIP LINES

“Due to interruptions of service over which the carriers have had no control, steamship services formerly used in the transportation of freight within the scope of this tariff have been temporarily suspended to the extent indicated below:

“[15] The Bull Steamship Line—All coastwise service temporarily suspended.

- “[15] Pan-Atlantic Steamship Corporation—All service within the scope of this tariff temporarily suspended.
- “[15] Seatrain Lines, Inc.—All coastwise service temporarily suspended.
- “10 Southern Steamship Company—All coastwise service temporarily suspended.

“Therefore, shipments will not be accepted until further notice, either direct or from connecting carriers, for transportation over the routes via which service has been temporarily suspended; except, that if and when ships and space are available, cargo will be accepted when covered by permit issued by the individual steamship lines.

“Application for permits must specify the kind and quantity of cargo, point of origin and destination, and ports of loading and discharge.”

The said Curlett Tariff I. C. C. A-732 set forth the joint rates with Seatrain Lines, Inc., and others, prescribed by the Commission's order of December 23, 1940, in Docket No. 23727 (243 I. C. C. 199), over the through routes prescribed by the Commission's order of January 28, 1938, in said No. 23727 (226 I. C. C. 7), being the said orders referred to in paragraph 3 hereof. The said prescribed rates have remained continuously in effect from the time of their establishment pursuant to said orders and are now presently in effect.

In I. C. C. Docket No. W-543 “Seatrain Lines, Inc. Common Carrier Applications”, the Commission (Division 4) rendered a report under date of July 2, 1942, in which it stated:

“In June and July 1941, two of applicant's vessels were requisitioned by the United States Maritime Commission, and the other three vessels were requisitioned by May 21, 1942, at which time all of applicant's operations between ports in the United States were discontinued. Such interruption of service was one over which

the applicant had no control and, therefore, should not prevent it from obtaining a certificate authorizing continuance of the operations in which it was engaged on January 1, 1940."

Upon the said date the Commission issued its Certificate and Order, a true copy of which is marked Exhibit 4 and annexed hereto.

Upon a request by Judge Fake that the effective date of the order of October 13, 1941 "be postponed until the further order of the Commission in order to permit the organization of the statutory court to hear the application for interlocutory injunction", the Commission granted the request only to the extent of postponing the effective date until May 1, 1942. Upon the hearing on May 23, 1942 before the three judge court below for an interlocutory and a permanent injunction, Judge Biggs requested the counsel for the Interstate Commerce Commission to obtain a postponement of the effective date of the order, and thereby render unnecessary the issuance by the court of an interlocutory injunction. Pursuant to said request, the Commission issued an order on May 25, 1942, postponing the effective date of the order until October 5, 1942. Thereafter, pending the determination of this cause, by orders of the Commission issued in said Docket Numbers 25728 and 25878 on October 2, 1942, December 26, 1942, February 25, 1943, May 14, 1943, July 9, 1943, July 29, 1943, September 10, 1943, October 27, 1943, November 9, 1943 and December 11, 1943, the effective date of the said order of October 13, 1941, has been postponed from time to time, and by an order of the Interstate Commerce Commission issued March 4, 1944, the effective date of the said order of October 13, 1941, has been further postponed to May 15, 1944. A copy of the last described order of the Commission is annexed hereto as Exhibit 5 and made a part hereof.


Upon the hearing in the court below on November 20, 1943, on the settlement of the final decree, the petitioners submitted a proposed decree setting aside the entire order

of the Commission dated October 13, 1941, but this was opposed by the Interstate Commerce Commission and the appellants in No. 845 (appellees in No. 846).


JOSEPH F. ESHELMAN.

Subscribed and sworn to before me this 1st day of May, 1944.

(Seal)



ELIZABETH MAYNARD,
Notary Public, D. C.



*Exhibits to Affidavit.***Exhibit 1.**EXCERPTS FROM ORDER OF JANUARY 28, 1938,
IN I. C. C. DOCKET NO. 25727.

"This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"*It is ordered*, That the above-named defendants, according as they participate in transportation of carload traffic over ocean-rail routes via the ports of New York and New Orleans between points in official territory covered by the findings in the twenty-third and twenty-fifth supplemental reports in *Consolidated Southwestern Cases* on the one hand, and points in southwestern territory covered by the findings in said twenty-third and twenty-fifth supplemental reports in *Consolidated Southwestern Cases* and points in that portion of southern territory on or south of the line of the Yazoo and Mississippi Valley Railroad extending from Vicksburg, Miss., to Meridian, Miss., and on the west of the lines of the New Orleans and Northeastern Railroad extending from Meridian to Hattiesburg, Miss., and the Gulf and Ship Island railroad from Hattiesburg to Gulfport, Miss., and points on the Louisville and Nashville Railroad extending east from Gulfport to the Alabama-Mississippi State line, on the other hand, be, and they are hereby, directed and required to join with Seatrain Lines, Inc., in establishing, on or before April 15, 1938, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by section 6 of the Interstate Commerce Act, through routes between the same points on the same classes and commodities, in carloads, via Hoboken, N. J., and Belle Chasse, La.

"*It is further ordered*, That the above-named defendants, parties to the through routes prescribed in the next preceding paragraph hereof, be, and they are hereby, directed and required to join with said Seatrain Lines, Inc., in establishing, on or before April 15, 1938, upon notice to this Commission and to the general public by not less than

30 days' filing and posting in the manner prescribed by section 6 of the Interstate Commerce Act, joint rates applicable on carload traffic over said through routes which shall not exceed the following: (a) Between points in official and southwestern territories described in the next preceding paragraph hereof, first-class (column 100) rates made by adding 17 cents per 100 pounds to the first-class (column 100) rates from and to the same points prescribed in said twenty-fifth supplemental report in *Consolidated Southwestern Cases*, and other class rates and commodity rates that take percentages of first-class (column 100) rates made by applying to the first-class (column 100) rates prescribed herein the same bases as provided in Finding No. 11 of said twenty-third supplemental report in *Consolidated Southwestern Cases*, as modified by the said twenty-fifth supplemental report therein; and (b) between points in official territory and points in southern territory described in the next preceding paragraph hereof, first-class (column 100) rates made by adding 17 cents per 100 pounds to the present first-class (column 100) rates from and to the same points applicable in connection with break-bulk water lines via the ports of New York and New Orleans, and other class rates and commodity rates that take percentages of first-class (column 100) rates made by applying to the first-class (column 100) rates prescribed herein the same percentages as are now in effect in connection with break-bulk water lines via the ports of New York and New Orleans.

"It is further ordered, That the joint ocean-rail rates prescribed in the next preceding paragraph hereof shall be governed by the same classification and exceptions thereto as govern the joint ocean-rail rates now applicable between the same points in connection with break-bulk water lines operating between the ports of New York and New Orleans."

Exhibit 2.

ORDER.

INTERSTATE COMMERCE COMMISSION.

No. 25728.

HOBOKEN MANUFACTURERS RAILROAD COMPANY,

v.

ABILENE & SOUTHERN RAILWAY COMPANY, *et al.*

No. 25878.

NEW ORLEANS AND LOWER COAST RAILROAD COMPANY,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY
COMPANY, *et al.*

PRESENT: JOSEPH B. EASTMAN, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Good cause appearing therefor:

It is ordered. That the effective date of the order of October 13, 1941, in the above-entitled proceedings be, and it is hereby, postponed until April 1, 1942.

2 Dated at Washington, D. C., on the 26th day of December, 1941.

By the Commission, Chairman Eastman.

W. P. BARTEL,
Secretary.

(SEAL)

Exhibit 3.**SEATRAN LINES, INC.**

General Offices—39 Broadway,
New York, N. Y.

New Orleans Offices—1024 Whitney Bank Building.
Houston Offices—1504 Commerce Building.

Operating a regular freight service with railroad-car carrying steamers, offering a non-break-bulk route between New York and Cuba; between New Orleans and Cuba; between New York and New Orleans; and between New York and Texas City, Tex.

Connections with all railroads at New York, New Orleans, Texas City, Tex. and Cuba.

SERVICES.

SEATRAN SERVICES ARE AS FOLLOWS:

CUBA

- ▲New York to Cuba
- ▲Cuba to New York
- New Orleans to Cuba
- Cuba to New Orleans

COASTWISE

- ▲New York to New Orleans
- ▲New Orleans to New York
- ▲New York to Texas City, Tex.
- ▲Texas City, Tex. to New York
- ▲Temporarily suspended

For further information please consult our offices.

GRAHAM M. BRUSH, President,
New York, N. Y.
JOSEPH HODGSON, First Vice President,
New York, N. Y.
E. K. MORSE, Vice President,
New York, N. Y.
G. S. AMORY, Vice President and Treasurer,
New York, N. Y.
W. J. MATHIEY, Freight Traffic Manager,
New York, N. Y.
E. E. BYRD, Asst. to Vice President,
New York, N. Y.
H. H. BENEDICT, General Freight Agent,
New York, N. Y.
H. E. FRY, General Freight Agent,
New Orleans, La.
A. E. D'HERETTE, Asst. Gen. Freight Agent,
New Orleans, La.
R. G. BARNES, General Freight Agent,
Houston, Tex.

ANTONIO RODRIGUEZ, General Freight Agent
for Cuba, Lonja del Comercio Baza,
Havana, Cuba.
DONALD W. SMITH, Claim Agent,
1419 Bloomfield Street, Hoboken, N. J.
G. W. GOLDSTEIN, General Western Agent,
Railway Exchange Building, St. Louis, Mo.
H. D. FRY, General Southwestern Agent,
1921 Republic Bank Building,
Dallas, Tex.
A. A. MUNRO, General Eastern Agent,
New York, N. Y.
CYRUS A. ANDERSON, 149 California Street,
San Francisco, Calif.
E. H. MUNDY & Co., Ltd.,
Royal Liver Bldg., Liverpool, Eng.
ATLANTIC FREIGHTING CORPORATION, Freight
Agent for the Continent of Europe,
Pearl St., New York, N. Y.

Exhibit 4.**CERTIFICATE AND ORDER.**

At a Session of the INTERSTATE COMMERCE COMMISSION, division 4, held at its office in Washington, D. C., on the 2nd day of July, A.D. 1942.

No. W-543.

SEATRRAIN LINES, INC. COMMON CARRIER APPLICATIONS.

Seatrain Lines, Inc. having filed applications under the provisions of Section 309(a) and (c) of the Interstate Commerce Act for a certificate of public convenience and necessity authorizing continuance of its operations as a common carrier by water, a full investigation of the matters and things involved having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is hereby certified, That public convenience and necessity require the continuance of operations by Seatrain Lines, Inc., as a common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of commodities generally between the ports of New York, N. Y., New Orleans, La., and Texas City, Tex., by way of the Atlantic Ocean and the Gulf of Mexico.

It is ordered, That said carrier be, and it is hereby, authorized to perform the service specified above, subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority by this Commission.

It is further ordered, That the holding of this certificate by said carrier be, and it is hereby, conditioned upon the exercise of the authority specified above, and upon compliance by said carrier with the requirements of the Interstate Commerce Act and the orders, rules, and regulations of the Commission thereunder.

It is further ordered, That the portion of the application seeking authority to transport passengers between New York and New Orleans be, and it is hereby, denied.

And it is further ordered, That this certificate and order shall take effect and be in force from and after August 10, 1942.

By the Commission, division 4.

W. P. BARTEL,
Secretary.

(SEAL)

Exhibit 5.**ORDER.****INTERSTATE COMMERCE COMMISSION.**

No. 25728.

HOBOKEN MANUFACTURERS RAILROAD COMPANY,

v.

ABILENE & SOUTHERN RAILWAY COMPANY, *et al.*

No. 25878.

NEW ORLEANS AND LOWER COAST RAILROAD COMPANY,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY
COMPANY, *et al.*

In the Matter of the Postponement of the effective date of
the order in the above entitled proceedings.

PRESENT: CLAUDE R. PORTER, Commissioner, to whom the
above entitled matter has been assigned for action
thereon.

Upon consideration of the proceedings in court in these
dockets, which proceedings require a postponement of the
effective date of the order herein, and good cause appearing:

It is ordered, That the effective date of the order of October 13, 1941, in said proceedings be, and it is hereby, further postponed from March 15, 1944, to May 15, 1944.

Dated at Washington, D. C., on this 4th day of March, 1944.

By the Commission, Commissioner Porter.

W. P. BARTEL,
Secretary.

(SEAL)

